
(1999) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 20846 of 1989 and 12765 of 1991, 9943 and 23939 of 1997 and 21 of 1999

Shitla Prasad Dubey and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Evidence Act, 1872 — Section 115

Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 10

Uttar Pradesh Cinematograph Rules, 1951 — Rule 3, 3(3)

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3, 3(2)

Citation : AIR 1999 All 260

Hon'ble Judges : R.K. Agarwal, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—All these petitions that have been filed by the same petitioners are inter linked and the main controversy is the same.

They were, therefore, heard together and are being disposed of by this common judgment.

2. The business of exhibition of films in a cinema house is regulated by the statutory provisions contained in U.P. Cinema (Regulation) Act, 1955 and the U.P. Cinematograph Rules, 1951. The exhibition of films in a cinema house involves entertainment and, therefore, the owner of a cinema house is liable to pay entertainment tax under the provisions of the U.P. Entertainment and Betting Tax Act, 1979.

3. In order to promote construction of new permanent cinema houses in small towns in the State of U.P., the Government had notified a scheme through a Government Order dated 17th of Oct. 1983 whereunder the entertainment tax

realised by owner of a cinema house from the viewers could be retained by him by way of grant in aid. The scheme did not attract sufficient response and, therefore, the scheme was modified Government Order dated 21st of July, 1986, a copy of which is Annexure 1 to writ petition No. 20486 of 1989. It is admitted that it is this scheme of which the benefit was claimed by the petitioner and which is relevant for the purposes of these writ petitions. The provisions made in this Government Order dated 21-7-1986 provided that the benefit of the scheme would be available to permanent cinema houses fulfilling the following conditions:--

- (i) The application for approval of site plan should be moved between 1-1-1983 and thereafter;
- (ii) The application for license should be made between 1-1-1984 to 31-3-1990.;
- (iii) The rate of admission to the entertainment including entertainment tax should not exceed Rs. 5/-.

The quantum of aid was -- (1) for cinemas in places with a population of more than 20000 but less than 1 lac according to 1981 census :--

- (i) for the first year equal to 100% of entertainment payable ;
- (ii) for second year equal to 75% of entertainment tax payable;
- (iii) for third year 50% of entertainment tax payable;
- (iv) thereafter nil.

(2) For cinema in places with population of less than 20000:--

- (i) for first and second years equal to 100% of entertainment tax payable;
- (ii) for third year equal to 75% of the entertainment tax payable;
- (iii) for fourth and fifth years 50% of the entertainment tax payable.
- (iv) for sixth year and thereafter nil.

The scheme contained in said Government Order also provided for some procedural requirement as under:--

- (i) the owner of the cinema would keep account of all receipts from sale of tickets according to Rule 13 of U.P. Entertainment and Betting Tax Rules and to prepare form kha;
- (ii) the amount of aid will be adjusted from the entertainment tax payable which the owner will prepare every week account showing the income from the sale of tickets, the amount of entertainment tax due and the amount payable, any after adjustment of amount of grant-in-aid;
- (iii) the amount of entertainment tax payable in cash will be paid within three days of the end of the week;

(iv) will not be necessary for the owner to deposit the amount of entertainment tax in cash. The owner shall prepare a monthly consolidated bill for the amount of aid in form 41 (b) according to Rule 209 of Financial Handbook Vol. V Part I and get them counter signed by the District Magistrate and present before the Treasury Officer a challan for the same amount.

(v) the sanction for grant-in-aid will be made by the District Magistrate after the grant of licence and after the owner has signed an agreement.

4. To avail the benefit of the abovementioned scheme, the petitioner Shitla Prasad Dubey wanted to construct a cinema house at Gopiganj District Varanasi (now district Bhadohi). It therefore, moved an application dated 13-3-1988 in terms of Rule 3 of the U.P. Cinematograph Rules for approving the site plan and specifications. The said rule states as under :

"3. Application for constructing a building: (1) A person desirous of constructing a permanent building to be used for cinematograph exhibition shall submit an application specifying the site on which the proposed building is to be constructed together with a plan and specifications thereof to the officer authorised in this behalf by Government.

(2) The plan mentioned in the aforesaid sub-rule contain the elevations and sections of the buildings, the proper electrical installations, arrangements for ventilation, sanitation and parking of vehicles and the position of premises in relation to adjacent premises and public thoroughfares on which the building abuts, within a radius of one furlong.

(3) The Licensing Authority may, if is satisfied that the site plans and specifications fully conform to the rule grant to the applicant a certificate signifying his approval thereto. The period within which the construction shall be completed shall be stated in the certificate."

During the processing of the petitioner's application, it was found that the petitioner had started the construction of the proposed cinema house before the approval was granted by the licensing authority under Sub-rule (3) of Rule 3. Rule 44 of the Rules that was enacted of w.e.f. 1-5-1989 provided for imposition of composition charges while granting exemption u/s (sic) of the Act, Section 10 of the U.P. Cinema (Regulation) Act provided that the State Government may, in the interests of general public or any section thereof, by order in writing and stating the reasons therefore, exempt, subject to such conditions and restrictions as it may impose, any exhibition or class of exhibitions by means of cinematograph or video from any of the provisions of this Act or Rules made thereunder. Rule 44 provide a composition charge of Rs. 50,000/- for exemption from the provision of Rule 3(3) aforesaid, meaning thereby in case the construction of a cinema house has begun or has completed before the approval of the plan and specifications under Sub-rule (3) of Rule 3, the owner can be granted exemption from the compliance the said rule on payment of composition charge of Rs. 50,000/-. Therefore, the District Magistrate, Varanasi by a letter

dated 17-11-1989 (copy of Annexure 11 to W.P. No. 20846/ 85) informed the petitioner that since he has completed almost 50% of the construction of the cinema house, this action was in violation of the aforesaid rule and according to the U.P. Cinematograph Rules, 19 w.e.f. 1-5-1989, a compounding fee of not exceeding Rs. 50,000/- will be payable and that if the petitioner was willing he should get the construction inspected by the Executive Engineer, P.W.D. Varanasi and furnish a certificate that the construction so far made were in accordance with the site plan submitted and the regulations. The petitioner did not deposit the amount and, therefore by another letter dated 15th Sept. 1989, copy of which is Annexure 12 to the writ petition, the District Magistrate Varanasi informed the petitioner that its application is rejected for violation of Rule 3. It is these two orders that the petitioner challenges, in W.P. No. 20846 of 1989. The petitioners case is that under the provisions of the aforesaid scheme, an application for grant of a cinema licence had to be made before 31-1-1990 and such application could not be made unless the cinema building was ready, he started the construction of cinema building so that it could be completed before the said date. His case is that as and when the petitioner approached the office of the District Magistrate and the entertainment tax officer regarding the grant of permission under Rule 3(3), he was informed that since the petitioner is constructing the cinema house in accordance with the rules, the formal sanction will be communicated and the petitioner should go on with the construction in order to meet the red lines by 31-3-1990. According to the petitioner he had done everything that was required for grant of approval under Rule 3(3). Since the District Magistrate did not communicate to the petitioner his approval under Rule 3(3), the petitioner filed a writ petition in this Court which was disposed of by order dated 21-7-1989 at the admission stage with a direction to the District Magistrate, Varanasi to pass final orders on the application made by the petitioner for sanction of the cinema building plan within a period of six weeks. A copy of the order is Annexure 9 to the writ petition. Thereafter the aforesaid order dated 17-7-1989 was communicated to the petitioner and later the subsequent order dated 15-9-1989 rejecting the site plans was communicated.

5. The petitioner's case in this writ petition is Rule 3(3) is not mandatory and as far back as 1970 the Government had taken a decision that where a cinema has been built without approval of the plans under Rule 3(3), a cinema licence can still be granted. A copy of the Government Order dated 19-2- (sic) has been annexed to the writ petition as Annexure 14. According to the petitioner, the cinema building constructed by him is in accordance with the provisions of the U.P. Cinematograph Rules and the petitioner is entitled for the grant of a cinema licence but the same is being refused only on the ground that the petitioner has not deposited Rs. 50,000/- as composition charges. The petitioner, therefore, prayed for the following reliefs :--

" 1. a suitable writ, order or direction in the nature of certiorari be issued calling for the record of the case quashing the orders dated 17-7-1989 and 15-9-1989 passed by respondent Nos. 3 and 4 (Annexure Nos. 12 and (sic));

2. a suitable writ, order or direction be issued declaring that the 20th amendment of the U.P. Cinematograph Rules, is arbitrary, illegal and discriminatory;

3. a writ of mandamus, order or direction in the nature of mandamus be issued directing the respondents to consider the petitioners applications for the grant of permanent licence excluding the alleged non compliance to Rule 3(3) as referred to in the orders a dated 17-7-1989 and 15-9-1989.

6. An interim order dated 10th May, 1990 was passed by this Court to the following effect:--

"If the petitioner deposits a sum of Rs. 50,000/- the impugned order dated 15th Sept. 89 shall remain stayed. It has been brought to our notice that the petitioner has filed an application for grant of permanent licence for exhibiting cinematograph films, we think it proper to direct that the same would be considered and decided strictly in accordance with law. The deposits made by the petitioner shall be disbursed according to the direction in the final decision of the writ petition."

On the same day, the writ petition was admitted and was ordered to be connected with W.P. No. 1828 of 1990. A counter affidavit has been filed on behalf of the respondents. Their case, briefly stated, is that the petitioner started the construction of the cinema building and completed about 50% of it before the site plans and specifications were approved by the Licensing Authority and thus violated Rule 3 of the Rules for which it was liable to pay a composition charge of Rs. 50,000/- in terms of Rule 44. According to the respondents the petitioner having not paid the sum of Rs.50,000/- inspite of demand, his application for approval of the site plans and specifications was rightly rejected.

7. In the next writ petition (No. 12765 of 1991) it is prayed that the Licensing Authority be directed to issue a formal licence for exhibition of films in the aforesaid newly constructed cinema house. The petitioners" case is that in compliance with the interim order of this Court in Writ Petition No. 20846 of 1989, he has deposited the sum of Rs. 50,000/-. He moved an application dated 25-2-1990 for the grant of licence before the respondent No. 1. The Licensing Authority by a letter dated 3-4-1991, copy of which is Annexure 3 to the writ petition, offered to grant the licence subject to the following conditions :--

(i) The owner deposits Rs. 50,000/- in the Treasury.

(ii) The owner will not be entitled to the benefit of the grant in aid under the incentive scheme and would execute an agreement to this effect.

(iii) Deposits Rs. 20,000/- towards security for the regular payment of entertainment tax.

(iv) Deposits Rs. 300/- per month towards licence fee.

(v) Furnishes a certificate for the supply or approved films from the Ministry of

Information of Broadcasting Government of. India, Films Division, Lucknow.

(vi) Complies with the provisions of U.P. Entertainments, and Betting Tax Act and Rules framed thereunder.

8. The petitioners' case is that he has already deposited Rs. 50,000/- and therefore the first condition stands complied with. The second condition, referred to above, is alleged to be the arbitrary and illegal but under coercion and compelling circumstances the petitioners had to execute a bond to comply with this condition. Regarding the third condition the petitioner claiming that he has already deposited Rs. 20,000/-. It is claimed that the petitioner is ready to comply with the other conditions also as soon as an order to deposit licence fee is made. According to the petitioner he had complied with the conditions specified in the letter dated 3-4-1991, yet the Licensing Authority has not granted licence to run the cinema. It was claimed that the petitioner has invested huge amounts in the construction of cinema and is suffering loss due to non grant of the licence.

9. The petitioner applied for interim relief and this Court passed the following order on 26-4-1991 :--

"Heard, standing counsel may file a counter affidavit within three weeks, rejoinder affidavit may be filed within two weeks thereafter.

The petitioner had applied for grant of a licence for constructing a permanent building for a cinema Hall on 20-1-1988 for which necessary plan etc. were submitted with an application dated 13-3-1988. It appears that even before the plan was approved the petitioner started construction because he wanted to avail the benefit of Sahayak grant-in-aid scheme in terms of G.O. dated 21-7-1986. This benefit could be available only if permanent cinema is constructed and application for licence made before 31-3-1990. The aforesaid application was, however, rejected on 15-9-1989, The petitioner challenged that order in writ petition No. 20846 of 1989 and operation of the said order was stayed on petitioner's depositing Rs. 50,000/-. This direction was apparently given by the Court in view of the Uttar Pradesh Cinematograph (20th Amendment) Rules, 1989 whereunder compounding fee of Rs. 50,000/- was leviable for exemption from Rule 3(3). Despite deposit of the amount as directed by this Court vide treasury challan No. 29 on 17-5-1990 the respondents have directed the petitioner, by order dated 3-4-1991 (Annexure 3), to deposit alike sum of Rs. 50,000/- or else the licence will not be issued to him.

According to Sri A. Kumar, the petitioner having already deposited a sum of Rs. 50,000/-precisely for the same purpose the direction given by the respondent is illegal. According to him the petitioner has already challenged the validity of the imposition of this condition in writ petition No. 20846 of 1989 as a precondition for issue of licence as bad in law. Be that as it may we are of opinion that condition as to deposit of Rs. 50,000/- for exemption from Rule. 3(3) mentioned in the impugned order shall not be insisted upon before issue of licence. Order

accordingly.

The District Magistrate, Varanasi shall also endeavour to dispose of the petitioner's application dated 12-4-1991 (Annexure 4) within a period of two weeks from the date of presentation of a certified copy of this order before him."

10. In reply the respondents contend that conditions (i) and (ii) were imposed on the directions of the State Government as contained in order dated 1-2-1991, copy of which has been annexed to the counter affidavit as CA 1 and that since the petitioner complied with conditions No. (ii) to (vi) a permanent cinematograph licence has been issued to him for the period 15-5-1991 to 31-3-1992. Condition No. (i) was not further pressed because of the interim order dated 26-4-1991 in W.P. No. Nil of 1991. It is claimed that since the license has already been issued, this petition has become infructuous.

11. No rejoinder affidavit has been filed in this petition by the petitioner.

12. To continue the links of the story reference will have to be made to W.P. No. 15913 of 1991 and that was dismissed on 10-12-1996. After the grant of the licence the petitioner started exhibition of the films but did not pay entertainment tax. The Asstt. Commissioner, Entertainment Tax issued a notice dated 10-6-1991 to the petitioner stating that the petitioner was not paying entertainment tax and demanded a sum of Rs. 13,094.55 for the period 25-5-1991 to 31-5-1991. It was prayed that the said demand notice be quashed and the respondents be restrained from realising entertainment tax from the petitioner. The case set up by the petitioner was that he was entitled to the grant in aid under the Scheme contained in Govt. Order dated 21-7-1986. An interim order was granted by this Court on 19-6-1991 saying "Meanwhile the respondents are restrained from compelling the petitioner to deposit entertainment tax or realisation thereof in pursuance of order dated 10th June, 1991." Though this order related to the demand of Rs. 13,094.55 p only for the period 25-5-1991 to 31-5-1991, the petitioner utilised this order for not paying entertainment tax for the following period also.

13. This petition (15913 of 1991) was ultimately dismissed on 10-12-1996 by a Division Bench of this Court on the ground that the period should have approached the authority itself raising his grievance.

14. After the above order was passed in W.P. No. 15913 of 1991 the petitioner made a representation in Jan. 1997 to the authorities i.e. The Special Secretary, Entertainment Tax, the District Magistrate, Varanasi Bhadohi and the Asstt. Commissioner, Entertainment Tax claiming that he was entitled to the benefit of the grant in aid scheme contained in G.O. dated 21-7-1986 and the demand notice dated 10-6-1991 be quashed. This representation has been decided by the Licensing Authority/District Magistrate, Bhadohi by an order dated 30-1-1997 rejecting the claim and demanding a sum of Rs. 27,725.17 p due on account of entertainment tax till date. The reason for rejecting the claim mainly was that the petitioner had started the construction before the approval of plans and

specifications and had thus violated Rule 3(3). The order says that the deposit of Rs. 50,000/- towards composition charge cures the default only in respect of the grant of licence and has no concern with the grant in aid. It also states that while granting licence to the petitioner it was made clear that to him that he willingly executed an agreement to that effect. The order further says that the petitioner has not complied with the terms of the scheme in as much as the petitioner has not deposited 25% entertainment tax in the third year and 50% in the 4th and 5th year.

15. It is this order dated 30-1-1997 which is challenged in W.P. No. 9943 of 1997. The reliefs claimed for in this petition are that the said order dated 30th Jan. 1997 be quashed and the respondents be directed not to give effect to the same and not to interfere in any manner in the petitioners' running of the cinema named "Raghukul Palace". The petitioners' case is that the petitioner submitted his application for approval of the site plan and specifications and no disapproval thereof was communicated. The petitioner issued a reminder dated 31-5-1988. The District Magistrate directed the Sub Divisional Officer to submit a report in the matter which was submitted on or about 31-12-1988. The Executive Engineer, Public Works Department also by a letter dated 20-4-1989 returned the plans duly counter signed by him with his report, a copy of the letter of the Executive Engineer has been annexed as Annexure 3 to the writ petition. It is claimed that with a view to meet this dead line of 31-3-1990 by which the application for grant of a cinema licence had to be made, the petitioner continued the construction as neither disapproval nor rejection of the plans and specifications had been communicated to him. The objection, raised by the Executive Engineer in his letter aforesaid were also duly met. Regarding the approval under Rule 3(3), it is claimed that whenever the petitioner approached the office of the District Magistrate and the Entertainment Tax Officer he was informed that since he is constructing the cinema building in accordance with the rules, the formal sanction will be communicated and the petitioner should go on with the construction. It is claimed that nothing further was required of the petitioner for the issue of the order of approval under Rule 3 but the same has not yet been communicated to the petitioner. Here it may be mentioned that this averment has been made in this writ petition that was filed in March, 1997 while the plan had already been rejected. The composition charge had already been demanded and this site plan and specifications had already been rejected in the year 1989 and the rejection is the subject matter of Writ Petition No. 20896 of 1989. In paragraph 22 of the present writ petition also, it is stated that the petitioner had complied with all the formalities, yet the respondent is sitting tight over the matter and has not granted the requisite permission, as required under Rule 3 of the U.P. Cinematograph Rules 19 51. In paragraph 24 of the writ petition also it is stated that the petitioner has met the District Magistrate several times but till date no orders have been passed by the District Magistrate, though as stated above, orders have been passed from time to time regarding the compliance of Rule 3 aforesaid, the grant of licence subject to the conditions,

referred to above, and the demand of entertainment tax. It is claimed that the petitioner has complied all the conditions contained in the Government Order dated 21-7-1986 and is, therefore, entitled to tax holiday benefits" as contemplated under the said Scheme. No counter affidavit has been filed by the respondents in this petition. An application for staying the operation of the order dated 30-1-1997 was made in this writ petition but no orders thereon were passed.

16. Since no interim order was granted to the petitioner in Writ Petition No. 9943 of 1997, the respondents proceeded with the recovery of the dues on account of entertainment tax as arrears of land revenue and the petitioner came to this Court again in Writ Petition No. 2393 of 1997 challenging the proclamation of sale and seeking a writ directing the respondents not to auction the cinema hall. The contention was that the petitioner was not liable to pay that much of demand because he was entitled to grant in aid under the aforesaid scheme and it was further stated in paragraph 19 of the writ petition that the petitioner had deposited Rs. 3,33,765/- between the period 25-2-1997. So far as the procedural aspect of the recovery is concerned, no illegality therein is alleged. Although the petitioner applied for interim relief, no order staying the same was made in this petition. No, counter affidavit was filed by the respondents.

17. Then we come to the last of this group of petitions i.e. Writ Petition No. 21 of 1999 in which a communication dated 31-10-1998 sent by the District Magistrate, Sant Ravi Das Nagar, Bhadohi, the licensing authority is challenged. This communication states that the petitioners application dated 3rd Oct. 1998 is not found acceptable. This order has been made on an application sent by the petitioner to the District Magistrate, Sant Ravi Das Nagar claiming that he was entitled to the gram in aid benefit and prayed for the grant of the same in view of the amended Government Order dated 27-8-1998. The amended Government Order copy of which is Annexure 18 of the writ petition, stated that the benefit of grant of aid scheme would not be available where a person had constructed a cinema house without the approval under Rule 3, although he may have been granted a licence but only those cinemas be denied this benefit where the construction has been started without submitting the plans and where the construction was started after the submission of the plan and specifications then the benefit of grant in aid be given on payment of the composition charge. By its letter dated 27th of Aug., 1998, the Government amended the grant in aid scheme as contained in the Government order dated 17-7-89. The petitioner's contention in this petition briefly stated is that the Government itself realised that depriving a cinema owner of the benefit of grant in aid for violation of rule harsh and, therefore, amended the scheme and, therefore, the benefit should have been granted to the petitioner.

18. A counter affidavit has been filed in this writ petition as well.

19. It is stated that the application that was moved for the grant of licence on 25-2-1990 was not complete in as much as the various certificates were not

appended thereto and that the relevant certificates were filed later. It is also stated in the counter affidavit that the licence fee was also not paid along with the application.

20. At the hearing, the learned counsel for the respondents stated that he would rely on the counter affidavit filed in writ petition No. 20846 of 1989 and 21 of 1999 and would rely on the statutory provisions contained in the Act and the Rules and in the Government Orders pertaining to the grant in aid scheme and the petitions have been finally heard on this understanding.

21. As is evident from the above narration, the main controversy between the parties arises from the breach of the Rule 3 which has been reproduced in earlier part of this judgment. Admittedly the petitioner after submitting the plans and specifications started constructing the cinema building without the approval of the Licensing Authority. The allegation that the Asstt. Entertainment Commissioner or the officials in the office of the Licensing Authority told the petitioner that he may undertake or continue with the construction of the cinema building and formal approval would issue in due course is of no consequence as neither had any authority to do so as far as the Licensing Authority i.e. District Magistrate is concerned, it is not even the case of the petitioner that he also told the petitioner so and expressed his oral approval of the plans and specifications.

22. The contention of the learned counsel for the petitioner was that Rule 3 was only regulatory in nature and its technical breach of the nature in the present case i.e. the start of the constructions before the formal approval would not disentitle a person for the grant of the licence or for the grant in aid. Reliance is placed on Keshav Singh Azad v. State of U. P. 1990 All LJ 1028. In that case also after submitting the plans and specifications the person concerned started the construction of cinema house and for this default the Licensing Authority refused to issue the requisite certificate. The question was whether the plans could be refused to be approved if the construction had been started before the approval though it was otherwise in accordance with the plans and the required specifications. The Division Bench noted that Section 8 of the U. P. Cinemas (Regulation) Act, 1955 which makes provision for penalty did not make a violation of Rule 3 (3) punishable and Section 5 also talked of substantial compliance. The Division Bench, therefore, held that the Act and the Rules did not specifically require prior Approval under Rule 3(3) and, therefore, the licence could not be refused for that reason. In H.P. Tulsiyan v. Special Secretary 1991 All LJ 580 the petitioner wanted to construct a cinema house and, therefore, in accordance with Rule 3, he submitted the plans and specifications for approval. On enquiry by the Licensing Authority it was found that the proposed construction would come within a radius of 75 metres from an educational institution and, therefore, was not in accordance with Rule 7. Therefore, the plans were rejected and an appeal to the State Govt. also failed. Thereupon, the petitioner came to this court for quashing the orders of rejection of the plans and for a direction to approve the same. The writ petition was dismissed. This Court

observed that the State Govt. had power to make rules providing for situation and location of the place and the certificate in terms of Rule 3 could be given only if the provisions of the Rules had been strictly complied with. As is evident Tulsiyan's case dealt with a different situation in which the building itself would be in violation of Rule 7 and the earlier judgment of this Court in the case of Keshav Singh Azad was not noticed. This subsequent judgment, therefore, cannot be of any help in the present case.

23. Shri Ashok Mehta, learned Chief Standing Counsel laid stress on the language of Rule 3 (1) which uses the words "a person desirous of constructing a permanent building and contended that these words show that the application under Rule 3 (1) has to be made before starting the construction and the construction has to be after the approval has been granted in terms of Sub-rule (3). This contention is only partially correct and relates to the requirements of the rule. But the question that is involved in this case is as to whether a breach of the nature, referred to above, would justify the refusal of a licence and the refusal of grant in aid under the scheme, referred to above. Here it is to be noted that Rule 44 was enacted w.e.f. 1-5-89 and provided that exemption from the provisions of specific rules u/s 10 of the Act can be granted on the payment of composition charges as mentioned therein. A composition charge of Rs. 50,000/- was provided for exemption of Rule 3 (3). In the present case the Licensing Authority demanded the composition charge of Rs. 50,000/- for granting the approval and since the amount was not paid, the petitioner's application under Rule 3 was rejected. It is not in dispute that when the application of the petitioner in terms of Rule 3 was pending, Rule 44 had been enacted. Earlier there was no provision for levying a composition charge and this rule was not put up for consideration before this Court in Keshav's case. 1990 All L.J 1028 Keshav Singh's ratio has now to be read in the light of Rule 44 the effect of which in our view is that non-payment of composition charge is a valid ground for not granting the approval and certificate under Rule 3 (3). In W. P. No. 20846/89 it was averred that the said rule is arbitrary and is, therefore, illegal. This Court by interim order dated 10th May, 1990 directed the petitioner to deposit Rs. 50,000/-. It was thereafter that the licence was granted to the petitioner, in the circumstances referred to above.

24. As regards the validity of Rule 44, no serious argument was addressed to us and the learned counsel for the petitioner Sri A. Kumar stated that the amount of Rs. 50,000/- deposited by the petitioner be treated to have been deposited towards the composition charge and as stated above, the respondents have already treated the amount to be so. Therefore, the controversy about the violation of Rule 3 is no longer relevant so far as the plans and specifications and the grant of licence is concerned. The dispute, thus, remains only about the petitioner's claim for grant in aid.

25. The scheme for grant in aid which is the basis of the petitioner's claim is contained in a Government Order 21-7-1976, copy of which is -annexed to writ

petition No. 20846/89. According to this scheme, the application for grant of a licence should have been made by 31st March, 1990. The application for licence has to be accompanied by the order or approval of the Government under Rule 3 (3). Admittedly in the present case there was no such approval and, therefore, the mere making of an application without complying with the requisite rules was not sufficient. The scheme does not speak about the failure in compliance of Rule 3 but without the approval under Rule 3 (3), an application for licence could not be made. The Government had the authority to waive the violation on payment of composition charge or otherwise. As is evident the licensing authority on the orders of the Government, required the petitioner to deposit composition charge in the sum of Rs. 50,000/-. That was not done, and the said charge is deemed to have been deposited somewhere after the 10th of May, 1990 in terms of the interim order of this Court in W. P. No. 20846/89. As mentioned above, the last date for making the application was 31-3-90 and by that date the composition charge was not deposited and the plans and specifications had not been approved nor they were ready to be approved because of the non payment of the composition charge. Therefore, the petitioner's application for issue of the licence was not a valid one. It is entirely a different thing that the circumstances referred to above, in view of the intervention by this Court, the licence has ultimately been granted but that would not make the application for grant of a licence a valid one. The scheme then provided for several conditions to be fulfilled by the owner. They are mentioned in the earlier part of this judgment that there is no averment that the petitioner has been fulfilling those conditions. For example, the scheme requires that before availing the grant in aid, the owner has to enter into an agreement with the Licensing Authority. No such agreement has been entered into in this case. Then there were conditions about the keeping of accounts and submitting of details in various forms and challans. There is no averments that this procedure has been followed. Then the petitioner was to pay a part of the entertainment tax to the Government in the subsequent years. In the order dated 20-1-1997 which is the subject matter of W. P. No. 9943/97, the Licensing Authority has specifically stated that from the date of start of the exhibition of the films (25-5-1991), the petitioner has been realising the entertainment tax from the viewers and from the third year onwards, he was required to deposit entertainment tax. In the third year, the petitioner would have paid 25% of the entertainment tax payable and in the fourth and fifth years 50%. In spite of these specific averments in the order under challenge, there is no denial of these allegations in the writ petition. On the other hand, as stated above, it is admitted in W.P. No. 9943 of 1997 that the first payment towards entertainment tax was made on 25-2-1997. Thus, the petitioner has not complied with the terms of the scheme.

26. Under the scheme the owner of a cinema house could not charge more than Rs. 5/- for admission to the entertainment. There is no averment anywhere in any of the writ petitions that the petitioner has restricted the rates of admission to Rs. 5/-.

27. Another important fact in this case is that the Licensing Authority while offering to issue a licence to the petitioner, laid a condition that the owner will not be entitled to the benefit of grant in aid under the incentive scheme and would execute an agreement to this effect. The petitioner did not object to this condition and executed an agreement, a copy of which is Annexure 12 in W.P. No. 9943/97. The agreement is in the form of a declaration that the owner i.e. Shitla Prasad Dubey, the present petitioner, would not be entitled to the benefit of the grant in aid scheme. The contention of the petitioner is that, placed in the circumstances narrated above, he had no option but to execute the agreement. The learned counsel for the petitioner pointed out that the building had already been constructed with a huge investment and the business had to be commenced to prevent losses and, therefore, under this sort of coercion, the petitioner had to execute the agreement. This economic difficulty of the petitioner that was of his own making in as much as he started the construction of the cinema house without the plans having been approved and was not willing to pay the composition charge, could not amount to coercion, as defined in the Indian Contract Act and, therefore, could not be of any help. The application for the grant of a licence had already been made and, therefore, at least according to the petitioner the requirement of availing the benefit of the scheme had been fulfilled by him as the date of actual grant of licence was not relevant for the scheme. Therefore, the petitioner could have, instead of readily complying with the condition, objected to this condition or have come to this Court for quashing the same on the ground that such a condition could not be imposed under the scheme and in the circumstances of the case. The intention of the Government in imposing this condition was clear. The Government wanted that there should be no dispute subsequently about the grant in aid and wanted to settle the matter by requiring the petitioner to enter into an agreement that he will not claim the benefit of the scheme and would not be entitled to it. Instead of challenging this condition as illegal, the petitioner agreed to it and executed the agreement and now is trying to wriggle out of it.

28. Reliance was placed on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, in which it was held that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair or unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. In that case a permanent employee was made to enter into an agreement that the employment can be terminated on three months' notice on either side. It was held that the condition was unconscionable and was, not enforceable. In the present case the situation is not exactly the same. The petitioner had the protection of statutory rules and this could be availed on only by following the same. He seems to be an affluent man who having already had a cinema, wanted to have another one and, therefore, because of his affluence, he was willing to take the risk of starting the construction of the cinema building even without the plans having been approved under Rule 3 (3) and thus confront the authorities

with a fait accompli. Thus he was not willing to pay the compensation charge and sought intervention of this Court which was granted and it was then that he deposited Rs. 50,000/-. The action of the authorities in taking the view that the benefit of the grant in aid scheme cannot be granted to the petitioner as he had constructed the building in violation of Rule 3 cannot be said to be mala fide. In these circumstances, it cannot be said that the agreement was the result of any coercion, Thus, the agreement having been arrived at and the petitioner having been taken the benefit of the agreement though the grant of licence, he cannot wriggle out of it.

29. If the petitioner wanted to challenge the aforesaid condition, he should have challenged the same either by making a representation to the Government or by filing a petition in this Court seeking a writ of certiorari to quash the aforesaid condition. Nothing of this sort was done by the petitioner and when the authorities demanded the entertainment tax from the petitioner through the notice dated 10th of January, 1991, he came to this Court merely seeking a writ of certiorari to quash the notice of demand and for a direction to the respondents not to realise any entertainment tax from the petitioner. The petitioner did not even pray for a direction that the respondents be directed to enter into an agreement with the petitioner for getting him the benefit of grant in aid scheme. As stated above, the aforesaid writ petition subsequently ended in dismissal.

30. Having entered into the aforesaid agreement with the Government disclaiming the benefit of the grant in aid scheme, the petitioner freed himself from all the obligations that would have to be followed and complied with. Having been freed from all the obligations throughout, he cannot seek the benefit of the scheme without complying with the conditions thereof, We are, therefore, of the opinion that the petitioner had not made out any case which deserves the interference of this Court by ordering that the benefit of the scheme contained in the Govt. order dated 21-7-1986 be extended to the petitioner.

31. As regards the contention that subsequently the Government clarified that the benefit of grant in aid scheme can be given even in case where there is violation of Rule 3(3). This could be done if the composition charge was paid before 31-3-1990. In our view, in the circumstances mentioned above, the modification in the scheme is of no consequences as far as the petitioner is concerned.

32. In view of the above discussions, writ petition No. 20846 of 1989 has become infructuous because of the later developments and the concession made on either side, as stated above, and the same is hereby dismissed.

33. Similarly writ petition No. 12765 of 1991 in which a direction to the Licensing Authority to grant a formal licence was prayed for, has also become infructuous in view of the subsequent grant of the licence.

34. As regards writ petition No. 9943 of 1997, it was in relation to the demand of Rs. 27,75,725.17 p. The demand was disputed only because the petitioner

claimed benefit under the grant in aid scheme, the quantum of the amount was otherwise not challenged. Since we have held that in the circumstances of the case, this Court cannot grant the benefit of this scheme to the petitioner, this writ petition too has to be dismissed and is hereby dismissed.

35. In writ petition No. 23939 of 1997 the challenge was to the proclamation of sale for recovery of the aforesaid dues. As stated above, there was no illegality in the procedure adopted for recovery. The challenge was only to the amount of the Government's claim. The said challenge having failed, this petition too deserves dismissal and is hereby dismissed.

36. Lastly writ petition No. 21 of 1999 did not raise any new controversy and was only a continuation of the old one and this too deserves dismissal and is hereby dismissed.

37. All the writ petitions are hereby dismissed with costs to the respondents. Interim orders are discharged.